

DETAILED ACTION

Request for Continued Examination

1. The request filed on 1/28/2010 for a Continued Examination (RCE) under 37 CFR 1.114 based on parent Application No. 10/590,096 is acceptable and a CPA has been established. An action on the CPA is attached.

Claim Rejections

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 4-9, and 39 are rejected under 35 U.S.C. § 102(b) as being anticipated by MOORMAN, as set forth in paragraph 5 of the previous Office Action and reprinted below for convenience:

MOORMAN discloses a method and apparatus comprising a flexible bag with an inner contents bag liner (22) locatable within an outer box carton (1) and a neck piece or collar (7), between a bag neck and a carton wall or wall aperture (see Fig. 6), with co-operative fit between respective collar and carton or carton aperture edge profiles. MOORMAN discloses a container for a flexible bag with a collapsed carton in a compact flat-pack configuration (see Fig. 2).

Examiner notes that any flexible bag would be capable of collapsing along with the carton blank,

Art Unit: 3721

which could then be transported or stored. A flexible bag with a carton wrap or sleeve around a bag leaving exposed a protruding bag neck and collar (see Figure 1). MOORMAN discloses a container for a flexible bag with a lockable closure cover flap integrated with the collar, to inhibit access to an underlying bag neck and so bag contents. Examiner considers cover flap 7 to provide a lockable closure. The outer peripheral wall of the spout (21) is being read on the claimed "retention collar".

Regarding claim 5, the injecting of air is being read on the air which would inherently be in the fill tube and thus precede the contents from any fill tube into the bag.

4. Claims 2 and 3 are rejected under 35 U.S.C. § 103(a) as being unpatentable over MOORMAN in view of EEG ET AL, as set forth in paragraph 7 of the previous Office Action and reprinted below for convenience:

MOORMAN discloses a method and apparatus comprising a flexible bag with an inner contents bag liner, as described above.

MOORMAN does not disclose a handle integrated with the collar.

EEG ET AL discloses a bag-in-box package comprising a handle aperture (18) foldably (via 16) formed with the collar for dispensing (22) (see Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify Moorman's container to include a handle formed integrally with the collar in order to provide a hand-hold, which would be useful while pouring the contents out of the container (see EEG ET AL, column 2:1-10).

Art Unit: 3721

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of MOORMAN by adding a handle, as taught by EEG ET AL, in order to make the product and method more convenient for a consumer.

Response to Arguments

5. Applicant's arguments filed 1/28/2010 have been fully considered but they are not persuasive.

6. Applicant states on page 5 of his Response that "Applicant has reviewed the Examiner's rejections and has indicated that the outer peripheral wall of the spout 21 is being read on the claimed "retention collar." Applicant disagrees with the Examiner. To be sure, if the spout is the retention collar, then the last step of the method is an impossibility, namely, how can the spout be extended through itself. Applicant wholly cannot understand the rejection or the response to Applicant's argument.

However, it is not the entire spout of MOORMAN that is being read as the claimed "retention collar," but rather the outer peripheral wall.

Examiner notes that while the prior art is not exactly the same as the instant invention, the claims of the instant invention read on the prior art, as explained in the rejection above. Applicant is reminded that during patent examination of the claims, the pending claims must be given their broadest reasonable interpretation consistent with the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005). *See also* MPEP § 2111. Moreover, while the claims of

Art Unit: 3721

issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, *this is not the mode of claim interpretation to be applied during examination*. During examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). *See also* MPEP § 2111.01.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Paradiso. The examiner can normally be reached Monday-Friday, 9:30 p.m. – 6:00 p.m. (ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada, can be reached at the number listed below.

Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Technology Center Receptionist.

/John R Paradiso/

Examiner John Paradiso: (571) 272-4466

October 24, 2011

Additional Phone Numbers:

Supervisor Rinaldi Rada: (571) 272-4467

Fax (Official): (571) 273-8300

Fax (Direct to Examiner) (571) 273-4466 (Drafts only)